

REMARKS

The Office Action mailed September 26, 2007 has been carefully considered. Within the Office Action Claims 1-11 have been rejected. The Applicants have amended Claims 1-8 and have cancelled Claims 9-11. The Applicants reserve the right to further pursue the cancelled claims in a continuation and/or divisional application as well as for appeal purposes. Reconsideration in view of the following remarks is respectfully requested.

Informal Objections

Within the Office Action, the Abstract has been objected to. Applicants have amended the Abstract within this reply, and with this amendment it is respectfully requested that the objection be withdrawn.

The 35 U.S.C. § 112, Second Paragraph Rejection

Claims 1-11 are rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter that the Applicant(s) regards as the invention. This rejection is respectfully traversed. However, to expedite prosecution of the present application, Claims 1, 7 and 8 have been amended and Claim 9 has been cancelled. Accordingly, it is respectfully requested that the rejection be withdrawn.

Rejection under U.S.C. § 102

Claims 9-11 were rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by PCT WO 02/41996 to Andersson et al. (hereinafter “Andersson”). The Applicants respectfully traverse. However, to expedite prosecution, the Applicants have cancelled Claims 9-11. Accordingly, this rejection is now moot and withdrawal is requested.

Rejection under 35 U.S.C. § 103

Claims 1-4 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable to U.S. Patent No. 5,490,034 to Zavracky (hereinafter “Zavracky”). In addition, Claims 5 and 6 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Zavracky in view of U.S. Patent Publication No. 2002/0185337 to Sundberg et al. (hereinafter “Sundberg”). This rejection is respectfully traversed.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. In re Vaeck, 947 F.2d 488 (Fed. Cir. 1991).

In determining obviousness four factual inquiries must be looked into in regards to determining obviousness. These are determining the scope and content of the prior art; ascertaining the differences between the prior art and the claims in issue; resolving the level of ordinary skill in the pertinent art; and evaluating evidence of secondary consideration. Graham v. John Deere, 383 U.S. 1 (1966); KSR Int'l Co. v. Teleflex, Inc., No 04-1350 (U.S. Apr. 30, 2007) (“Often, it will be necessary . . . to look into related teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an **apparent reason** to combine the known elements in the fashion

claimed by the patent at issue. To facilitate review, this analysis **should be made explicit.”**) (emphasis added).

In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. Stratoflex, Inc. v. Aeroquip Corp., 713 F.2d 1530 (Fed. Cir. 1983). Thus, when considering the whole prior art reference its entirety, portions that would lead away from the claimed invention must be considered. W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540 (Fed. Cir. 1983), See M.P.E.P. 2141.02. Thus, it is improper to combine references where the references teach away from their combination. In re Grasselli, 713 F.2d 731 (Fed. Cir. 1983).

With regards to Zavracky, Zavracky discloses a sensor, whereby the method of making the sensor involves forming openings 257 in the film 254. The oxide layer 252 is then etched through the openings using an HF etchant to form the channels 261. Following, polysilicon clamps 270 are formed in the channels and a cavity 274 is formed by etching with the HF etchant. Thereafter, the HF etchant is removed from the cavity.

However, unlike the subject matter recited in Claim 1, Zavracky does not disclose or suggest confining a liquid in at least one area or confining liquid to a cavity. In fact, Zavracky teaches away from the notion of confining a liquid in the at least one area or cavity because Figures 19A-19C in Zavracky illustrates that alcohol or other liquid 290 is applied to the cavity and then is evaporated using a vaporization technique. Considering that the entire Zavracky reference must be considered in conducting the obviousness analysis, one skilled in the art would have no apparent reason to use or modify the disclosure of the Zavracky reference in reaching the

claimed subject matter in Claim 1. For at least these reasons, Claim 1 is non-obvious and patentable over Zavracky.

Claims 2-8 are dependent on Independent Claim 1. As stated above, Claim 1 is allowable over Zavracky. Accordingly, Claims 2-8 are allowable for being dependent on an allowable base claims.

Conclusion

It is believed that this reply places the above-identified patent application into condition for allowance. Early favorable consideration of this reply is earnestly solicited.

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. Please charge any additional required fee or credit any overpayment not otherwise paid or credited to our deposit account No. 50-1698.

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Respectfully submitted,


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